

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

DAVID NELSON,

Plaintiff,

v.

Case No. 2:09-cv-01108

JUDGE MICHAEL THORNSBURY,
Circuit Court for Mingo County,
C. MICHAEL SPARKS,
Prosecutor for Mingo County,
JIM GILLMAN, Investigator,
MARK HOBBS, Attorney at law,
JOHN W. MILAN, Chief Investigator,
West Virginia State Police,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

By Order entered November 17, 2009, the undersigned directed Plaintiff to pay an initial partial filing fee of \$31.85 and advised him that service of process would not issue unless and until he paid that money (docket # 8). On December 31, 2009, the Clerk received \$8.28, which was credited to Plaintiff (# 13). On March 5, 2010, the Clerk again received \$8.28, which was also credited to Plaintiff (# 17). On March 17, 2010, the Clerk received another payment of \$8.28, which was credited to Plaintiff, with all payments totaling \$24.84. (# 19).

By Order entered June 22, 2010 (# 20), the undersigned reviewed these payments, noting that \$7.01 remained to be paid

before process would issue, and instructing Plaintiff to advise the Clerk if the payment records were inaccurate or if his financial circumstances had changed. Plaintiff did not respond in any manner, and the remainder of the initial partial filing fee has not been paid. In fact, Plaintiff has taken no further action whatsoever concerning this case. Accordingly, the undersigned proposes that the presiding District Judge **FIND** that Plaintiff has failed to prosecute this civil action. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter without prejudice for failure to prosecute.

Plaintiff is notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall

constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to Judge Copenhaver.

The Clerk is directed to file this "Proposed Findings and Recommendation" and to mail a copy of the same to Plaintiff.

September 17, 2010
Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge